(2)

No. 90-1479

FILED
APR 18 1991
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1991

ELAINE E. GROVER,

PETITIONER

V.

ROCHELEAU, FOURNIER & LEBEL, P.A.
WILLIAM ROCHELEAU, JR. &
PAUL FOURNIER,

RESPONDENTS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

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TABLE OF AUTHORITIES

Cases:

Walter v. Grover,
Lincoln County Civil
Action Docket No. 85-03. . . . 3,4,5

Rules of Court:

M.R.Civ.P. 16(c)(1). 1

M.R.Civ.P. 56. 3,5

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ARGUMENT

Petitioner asserts that the question presented for review is whether she was denied her right to a jury trial pursuant to the Constitution of the United States.

Petitioner's entire argument consists of the single sentence: "Certiorari should be granted because Petitioner has never had the jury trial order on June 20, 1989." (Petition at 7).

The referenced Order is reproduced in this Brief, as Attachment A, for the Court's convenience. The Order, entitled "Expedited Pretrial Order", is a form order issued by the Court pursuant to Maine Rule of Civil Procedure 16(c)(1), which essentially sets the timetable for prosecution of civil actions in Maine, other than those deemed to require a more formal pre-trial conference procedure.

Plaintiffs/Respondents moved for summary judgment on the Complaint and on the Counter-claim. After hearing, summary judgment was granted for Plaintiffs/Respondents both on their Complaint against Petitioner and on Petitioner's Counterclaim against them.

Petitioner took her appeal of right to the Maine Supreme Judicial Court. The Maine Supreme Judicial Court affirmed the judgment in favor of Respondents, holding that the judgment entered in the Superior Court "was not the result of a denial of self-representation or unfair bias on the part of the Court and did not improperly supercede a prior pretrial order." (Appendix M to Petition).

Petitioner seeks review of the Maine Supreme Judicial Court's decision.

A party is not necessarily entitled to a jury trial in every case. Cases can be disposed of short of trial in a number

of ways, for example, pursuant to a Motion to Dismiss, or, as in this case, a Motion for Summary Judgment. It is not necessary to cite any case authority for this proposition.

Quite simply, Respondents prevailed in this case pursuant to a Summary Judgment Motion under M.R.Civ.P. 56 (substantially similar to F.R.Civ.P. 56), and that decision was affirmed on appeal.

Respondents, who have been hounded by the most aggressive litigation tactics of Petitioner for a number of years now, are compelled to point out that the underlying case in which Respondents were counsel for Petitioner, Walter v. Grover, and as a result of which Petitioner claimed in this case that the representation was inadequate, Petitioner was found to have defrauded the elderly Ms. Walter by registering a deed which Ms. Walter did not intend to deliver.

The deed purported to convey property from Ms. Walter to Petitioner. The Findings and Order in Walter v. Grover, Lincoln County Civil Action Docket No. 85-03, are attached for the Court's convenience and labelled Attachment B.

The Petition should be denied because it raises no issue of importance or justice. The Petition should be denied for the further reason that the Petitioner has failed to present with accuracy and clarity those matters necessary to a ready and adequate understanding of the points requiring consideration. (Rule 14.5 of the Rules of the Supreme Court of the United States.) Specifically, Petitioner has consistently misstated the record in her Statement of the Case in her Petition. For example, at page 4, she suggests that Justice Lipez refused to hear her arguments (at the Summary Judgment Motion

hearing) because she was not represented. The transcript clearly indicates that Justice Lipez was most patient with Petitioner and gave her an opportunity to respond to the points raised by Respondents in their Summary Judgment Motion. As a further example, Petitioner makes the assertion that "Court records and trial exhibits in Walter v. Grover have been altered." (Petition at 5). That allegation of egregious misconduct has no basis in fact whatsoever.

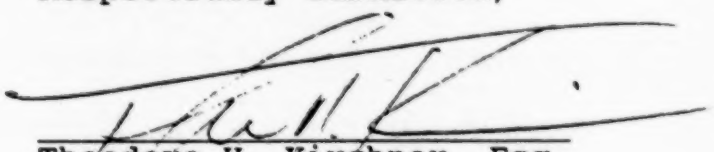
Perhaps what is most telling of the materials before this Court about Petitioner's litigation style, is the document entitled "Corrections to Transcript of Hearing", which is part of Appendix L of the Petition. In that document, Petitioner makes wholesale changes to the transcript of the Summary Judgment Motion hearing.

While it is a grand notion that any citizen with a legitimate grievance may ultimately have his or her grievance addressed by the highest Court in the land, this case is not deserving of this Court's time and consideration. Petitioner remains disgruntled because her efforts to defraud Ms. Walter out of a valuable piece of real estate were frustrated. While it is appropriate for this Court, as it was appropriate for Maine's court system, to be deferential to, and respectful to, the arguments of pro se litigants, Petitioner's persistent misstatements of fact and blatant misrepresentations of the record make it difficult for Respondents to oppose graciously her nagging and insulting filings, which have included a Board of Bar Overseers complaint about undersigned counsel.

CONCLUSION

For any or all of the reasons set forth herein, this Court should reject the Petition for Writ of Certiorari.

Respectfully submitted,



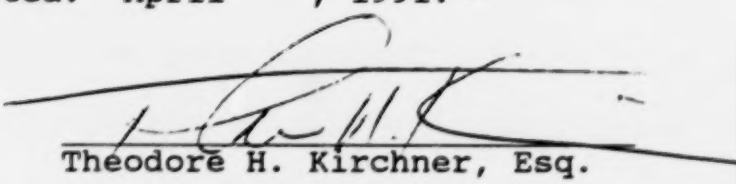
Theodore H. Kirchner, Esq.
Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that forty (40) copies of the within Brief in Opposition to Petition for Writ of Certiorari to the Maine Supreme Judicial Court of the Respondents have been deposited in the United States Mail this date, postage prepaid, to Joseph F. Spaniol, Clerk of the U.S. Supreme Court, 1st Street, N.W., Washington, D.C. 20543.

Three (3) copies of the Brief have been served upon Elaine E. Grover, Petitioner by depositing the same in the United States Mail, this date, postage prepaid, and addressed to her as follows: Elaine E. Grover, R.R. #3, Box 937, Wiscasset, Maine 04578.

Dated: April , 1991.



Theodore H. Kirchner, Esq.

ANDROSCOGGIN, SS. SUPERIOR COURT
CV-89-184

WILLIAM ROCHELEAU, JR.,

Plaintiff

v.

EXPEDITED
PRETRIAL
ORDER

ELAINE GROVER,

Defendant

Pursuant to Rule 16(c)(1), M.R.Civ.P., the court has reviewed the pleadings and the Pretrial Scheduling Statement in this action. IT IS ORDERED that the case be placed on the expedited pretrial list, and that:

1. **Discovery and Placement of Case on Trial List.**

Discovery shall be completed by December 1, 1989, and the clerk shall place the action on the (jury) trial list 30 days after that date. Expert witnesses shall be designated by the parties sufficiently early within the

discovery period so as to allow other parties time to take discovery and to designate expert witnesses of their own.

2. **Report of Conference of Counsel.**

Prior to the date fixed for the completion of discovery, counsel shall confer for the purpose of identifying witnesses, marking exhibits, setting forth the issues and entering into stipulations. No more than 10 days after the date fixed for the completion of discovery, counsel for the plaintiff shall file a report of the conference with the court, which report shall include a list of witnesses, exhibits, issues and stipulations. It shall also indicate the respective estimates of counsel of the time required for trial and the latest date (not less than 14 days before trial) by which names and

addresses of newly discovered witnesses and copies of newly discovered exhibits shall be furnished to opposing counsel.

Any witnesses or exhibits not listed in the conference report may be excluded by the court if it appears that adverse parties would be prejudiced by calling of the witness or introduction of the exhibit, or that adverse parties have not had adequate notice and opportunity to discover and to prepare for the testimony of the witness or review the content of the exhibit.

3. **Trial.**

Counsel signing the report of conference of counsel shall be deemed to be trial counsel, unless the court is otherwise advised in said report. The legal and factual issues at trial shall be as stated in the pleadings unless shown to be different in the report of the conference.

4. **Settlement.**

The parties shall notify the court that the action has been settled at any time prior to the date on which the action is placed on the trial list. After that date, the action shall be considered fully prepared for trial.

5. **Further Action.**

_____

_____

_____

_____

_____

_____

6. **Objections to Order.**

Any party who objects to any of the terms of this order, or who objects to the placement of the action on the expedited pretrial list, shall file a motion to amend such terms, pursuant to Rule 7(b) of the M.R.Civ.P. within 10 days of notice of this order.

ORDER: Pursuant to Rule 79(a) M.R.Civ.P., the clerk is directed to make the following entry in the docket of this case:

"Expedited Pretrial Order filed. Discovery to be completed by December 1, 1989. Case ordered placed on the (jury) trial list 30 days after close of discovery. By Order of the presiding justice the Expedited Pretrial Order is incorporated by reference in the docket."

Dated: June 14, 1989

_____

Justice, Superior Court

STATE OF MAINE
LINCOLN, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-85-03

ZOYA WALTER,	)	
	)	
Plaintiff	)	
	)	
v.	)	FINDINGS AND ORDER
	)	
ELAINE GROVER	)	
	)	
Defendant	)	

Findings of Fact

This matter was tried before the court on April 22 and 23, 1987. The plaintiff is a 69 year old widow who has lived in Russia, China, Germany, Canada and the United States. After her husband's death in 1977, she moved to Wiscasset to live with her sister until her sister's death in 1980. The plaintiff was left the home and land which is the subject matter of this litigation in her sister's will.

The defendant became acquainted with the plaintiff after her move to Wiscasset in 1977 as the defendant performed

housekeeping chores and ran errands for the sisters up to a few months before this trial. The plaintiff does not drive and was primarily dependent on the defendant to take her to do errands. The defendant also helped her around the house and was available to the plaintiff day or night. The plaintiff did not pay defendant for her assistance directly but did pay for all expenses when they were on trips or eating out.

The plaintiff, in appreciation of the efforts of the defendant, prepared a will (Pl. Ex. 1) on August 28, 1981, in which she bequeathed $5,000 to defendant and $5,000 to defendant's daughter. Plaintiff in the same year sold the real estate which is the subject matter of this controversy to a relative of her late sister. This sale was ultimately reversed when that relative failed to

make payment on the mortgage held by plaintiff and she foreclosed the mortgage.

In 1983 plaintiff prepared another will herself (Pl. Ex. 2) in which she named defendant as her executrix and the primary beneficiary of the real estate in question. At plaintiff's request, the defendant took her to Attorney Ervin D. Snyder who redrafted plaintiff's self-prepared will to conform the same to Maine law. At the same time the will was being drafted, Attorney Snyder also prepared a power of attorney for the plaintiff to be exercised by defendant and the deed in question transferring the real estate from plaintiff to defendant.

Five days later, on July 21, 1983, plaintiff was taken back to Attorney Snyder's office to execute the will and power of attorney. After consulting with Attorney Snyder, the plaintiff decided

not to execute the deed as he explained that she would lose control of her home and could not sell it if it later became necessary to do so.

The defendant was not present during the execution of the documents and the discussion of plaintiff and Attorney Snyder, but drove her to that appointment. After they returned to plaintiff's home the defendant reviewed the documents and discovered the deed was not executed. The defendant prevailed on plaintiff to call Attorney Snyder's office and make arrangements for the defendant to pick up that deed.

On July 28, 1983, the defendant took the plaintiff to the Lincoln County courthouse where plaintiff spoke to Roy Farmer who had an office there as he was the County Treasurer. Plaintiff asked Mr. Farmer what would happen if she signed the deed and he told her she would

give up title to her home. He felt that the plaintiff as somewhat confused and advised plaintiff that he could not acknowledge her signature as he did not have his notary seal with him.

The defendant took the plaintiff to Mr. Farmer's private office in Wiscasset where plaintiff executed the deed. Plaintiff and defendant returned to the Courthouse and went to the registry of deeds. The deputy register of deeds saw the plaintiff go into the register's office and overheard plaintiff's conversation with the register. The plaintiff was excited and wanted to know if she recorded the deed would she still own her home. The register advised her that if she did record the deed then she would give up ownership of her home. Upon hearing this plaintiff left the registry and did not record the deed.

The plaintiff and defendant went back to plaintiff's home where the plaintiff gave the deed, power of attorney and will to defendant to put into the defendant's safe deposit box on the understanding that they were to be returned to the plaintiff after plaintiff and defendant returned back to Wiscasset from a trip they both were taking to Florida.

The deed was recorded on July 28, 1983 at 1:55 p.m. and the power of attorney was recorded on May 29, 1984 at 1:30 p.m. The court finds that the plaintiff did not know or consent to the recording of either instrument. The lady who recorded the deed and provided a receipt in the name of the plaintiff testified that the person who recorded the deed was the defendant, Elaine Grover.

The plaintiff discovered during the winter of 1983-84 that the defendant had recorded the deed and asked defendant to deed it back. Defendant refused to reconvey and this lawsuit commenced.

Discussion

I. Conveyance of the Deed

When either language in a deed is ambiguous or the intention of the parties is in doubt the court may examine a deed in light of extrinsic circumstances surrounding its execution. See Holden v. Morgan, 516 A.2d 955, 956 (Me. 1986) (citations omitted). In this case, although the face of the deed unambiguously reveals the conveyance of the property from the plaintiff to the defendant, there is dispute regarding the delivery of that instrument. Legal delivery of a deed requires that the grantor transfer the deed to or for the benefit of the grantee with the intent to

vest that title in the grantee. Pierre v. Grondin, 513 A.2d 1368, 1369 (Me. 1986) (citations omitted). The grantor's intention is a question of fact to be determined from his or her words and actions. Id.

This Court is convinced by the evidence in this case that the grantor did not intend to transfer title to the grantee. In fact, her actions evince an unequivocal desire to retain title until the event of her death or in case sale of the property became necessary. Consequently, the court finds that legal delivery of the deed was not effectuated, and the defendant must reconvey the deed to the plaintiff.

II. Intentional Infliction of Emotional Distress

An individual may be liable for the tort of intentional infliction of emotional distress if "he intentionally

or recklessly inflicts severe emotional distress upon another by engaging in extreme or outrageous conduct." Rubin v. Mathews, 503 A.2d 694, 699 (Me. 1986). Although the defendant's conduct was fraudulent, this court finds that the evidence does not support the elements of a claim for emotional distress.

In accordance with the above, the Order will be:

Judgment for the Plaintiff on Count I (Fraud). The Defendant is hereby ORDERED to reconvey the property to plaintiff and to pay her her costs.

Judgment for Defendant on Count III (Intentional Infliction of Emotional Distress).

Plaintiff failed to meet her burden on Counts II and IV. Judgment for defendant on those counts.

Date: July 22, 1987

Roland Cole
Justice, Superior Court